

REMARKS

The foregoing amendment and the remarks which follow are responsive to the final office action dated September 14, 2006 and the advisory action dated December 5, 2006. Applicant's amendment previously submitted in response to the final office action was not entered. This amendment supersedes and replaces that previously submitted amendment in response to the final office action. A Request for Continuing Examination (RCE) is being filed concurrently herewith.

In the final office action, claim 79 was rejected under 35 U.S.C. §112 as being dependent upon a cancelled claim. Also, the previously stated rejection of all pending claims was maintained under 35 U.S.C. §103 on grounds of obviousness over the combination of United States Patent No. 6,749,585 (Aliberto et al.) in view of WO2001/74263 (Diamantopoulous et al.) alone, or over such combination further in view of either WO 2001/704265 (Mooney et al.), United States Patent No. 6,117,065 (Hastings et al.) or WO 1994/01177 (Hascoet et al.).

By the present amendment, Applicant has corrected the dependency of claim 79, thereby obviating the grounds for rejection of that claim under 35 U.S.C. §112. Also, by the present amendment, amendments have been made to independent claims 49 and 73 and dependent claim 70 has been cancelled. No new matter has been added.

As amended, both independent claims 49 and 73 requires a heat exchange catheter that is inserted into the subject's inferior vena cava and a temperature sensor on the heat exchange catheter that moves from a non-deployed position to a deployed position wherein it is 1.8 - 3.2 mm away from the catheter in temperature sensing contact with blood flowing through the inferior vena cava without resting in substantial contact with the wall of the inferior vena cava. No prior art of record teaches or suggests this specific combination of elements.

Applicant remains of the position that Aliberto does not teach or suggest any temperature sensor that is both "affixed to the catheter" and "moveable" from a non-deployed position to a deployed position. Rather, Aliberto merely provides a "lumen for

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holding a wire or wires that are attached to one or more distally-located sensors, such as temperature sensors, pressure sensors, gas sensors, and electrical sensors." A lumen through which wires with or without sensors thereon may be inserted is clearly not a temperature sensor that is "affixed" to the catheter. On page 3 of the Office Action the Examiner interprets Aliberto as disclosing a thermister that "can be disposed in a lumen of the catheter, or attached to a wire that is disposed in a lumen of the catheter, with the sensor hanging outside of the catheter." However, in embodiments where the sensor of Aliberto et al. is disposed in a lumen of the catheter, such sensor would definitely not be "moveable" from a non-deployed position to a deployed position as required by Applicant's claims. Furthermore, in embodiments where the sensor of Aliberto et al. is located on a wire disposed in a lumen of the catheter, such sensor is not "affixed to the catheter" as required by Applicant's claims. Thus, Aliberto et al. clearly does not teach or suggest Applicant's claimed invention where the temperature sensor is both "affixed to the catheter" and "moveable" from a non-deployed position to a deployed position. Furthermore, Aliberto et al. makes absolutely no disclosure or suggestion of the specific deployed position of a temperature sensor that is 1.8 - 3.2 mm away from the catheter in temperature sensing contact with blood flowing through the inferior vena cava without resting in substantial contact with the wall of the inferior vena cava as required by Applicant's amended claims. This specific spacing of the deployed temperature sensor away from the catheter shaft has been determined by Applicant and is not disclosed or suggested by Aliberto.

Even if the teaching of Aliberto et al. is combined with Diamantopoulos et al., the subject matter of Applicant's claims is still not rendered obvious. As the examiner recognizes, the temperature sensors of Diamantopoulos et al., when deployed, are in temperature sensing contact with the wall of the blood vessel to map localized variations in the temperature of the blood vessel wall. Thus, Diamantopoulos et al. make absolutely no teaching or suggestion of any temperature sensors that "sense the temperature of blood flowing through the blood vessel without substantial interference from heat exchange fluid passing through the catheter or from the adjacent blood vessel

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wall" as required by Applicant's claims. Moreover, as with Aliberto, Diamantopoulos et al. makes absolutely no disclosure or suggestion of the specific deployed position of a temperature sensor that is 1.8 - 3.2 mm away from the catheter in temperature sensing contact with blood flowing through the inferior vena cava without resting in substantial contact with the wall of the inferior vena cava as required by Applicant's amended claims.

On the basis of the foregoing arguments, reconsideration and issuance of a notice of allowance is earnestly solicited. The Examiner is invited to telephone Applicant's undersigned counsel to discuss any further measures that may be taken to expedite issuance of a notice of allowance in this case.

Respectfully submitted,

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Date: February 14, 2007



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